

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Bank of New York Mellon,
Plaintiff
v.
Annmarie Venier,
Defendants

2:15-cv-01444-JAD-CWH
Order Denying Motion for Default
Judgment without Prejudice

[ECF No. 13]

The Bank of New York Mellon sued Annmarie Venier for breach of contract and breach of an implied covenant of good faith and fair dealing after she defaulted on a loan.¹ After Venier failed to appear in this lawsuit, the Bank obtained a Clerk's default.² The bank now moves for a default judgment.³ Because the Bank failed to address the *Eitel* factors in its motion, I deny the motion without prejudice.⁴

Discussion

When the Clerk has entered a default against a party, Rules 54(b) and 55 of the Federal Rules of Civil Procedure permit the court to enter a default judgment.⁵ The Ninth Circuit in *Eitel v. McCool* set forth seven factors that govern the district court's decision whether to enter a default judgment: (1) potential prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the amount of money at stake in the action; (5) the potential

¹ ECF No. 1.

² ECF No. 12.

³ ECF No. 13.

⁴ I find this motion suitable for disposition without oral argument. L.R. 78-1.

⁵ *Eitel v. McCool*, 782 F.2d at 1470, 1471 (9th Cir. 1986); *Trustees of the Bricklayers & Allied Craftworkers Local 13 Defined Contribution Pension Trust for S. Nev. v. Tumbleweed Dev., Inc.*, 2013 WL 143378, at *2 (D. Nev. Jan. 11, 2013) (citing *Eitel*).

1 disputes as to material facts; (6) whether the default was due to excusable neglect; and (7) the strong
2 federal policy favoring adjudications on the merits.⁶

3 Except for the amount of money at stake, the Bank's three-page motion does not address the
4 *Eitel* factors. To obtain a default judgment, the Bank must specifically address each *Eitel* factor and
5 explain why these factors weigh in favor of granting default judgment. I therefore deny the Bank's
6 motion without prejudice to its ability to file a new motion that addresses the *Eitel* factors and
7 explains why these factors warrant the judgment that it requests.⁷

8 **Conclusion**

9 IT IS THEREFORE ORDERED that the **Bank's motion for entry of default judgment**
10 **[ECF No. 13] is DENIED without prejudice.**

11 Dated September 1, 2016

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13 Jennifer A. Dorsey
14 United States District Judge

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25 ⁶ See *Eitel*, 782 F.2d at 1471–72.

26 ⁷ See, e.g., *Rimlinger v. Shenyang 245 Factory*, 2014 WL 2527147 (D. Nev. June 4, 2014); *Neumont*
27 *University, LLC v. Little Bizzy, LLC*, 2014 WL 2112938 (D. Nev. May 20, 2014); *U.S. S.E.C. v.*
28 *Brandonisio*, 2013 WL 5371626 (D. Nev. Sept. 24, 2013); *Trustees of Teamsters Local 631 Sec.*
Fund for Southern Nevada v. Knox Installation-Dismantling and Services, Inc., 2013 WL 4857897
(D. Nev. Sept. 9, 2013).